

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
KNOXVILLE DIVISION**

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JESSE PIERCE and MICHAEL PIERCE,	)	
on behalf of themselves and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.: 3:13-cv-00641 -DCP
	)	
WYNDHAM VACATION RESORTS,	)	
INC., and WYNDHAM VACATION	)	
OWNERSHIP, INC.,	)	
	)	
Defendants.	)	

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**DEFENDANTS' UNOPPOSED MOTION TO RELEASE  
SUPERSEDEAS APPEAL BOND AND APPEAL BOND RIDER**

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Defendants Wyndham Vacation Resorts, Inc. and Wyndham Vacation Ownership, Inc. ("Defendants" or "Wyndham") respectfully move this Court, without opposition, for an Order releasing the supersedeas Appeal Bond and Appeal Bond Rider that they have filed in this matter. The grounds for this motion are as follows:

1. On February 5, 2018, this Court entered judgment in favor of Plaintiffs and against Defendants in the amount of \$5,025,925.82. (Doc. 429).
2. Defendants timely filed a Notice of Appeal to the United States Court of Appeals for the Sixth Circuit on March 7, 2018. (Doc. 430). Plaintiffs filed their cross Notice of Appeal on March 21, 2018 (Doc. 440).
3. The parties filed a Joint Motion to Stay (Doc. 458), attaching Defendants' proposed Appeal Bond (Doc. 458-1) and Appeal Bond Rider (Doc. 458-2). On November 11, 2018, the Court

signed an Agreed Order Staying Execution on Judgment and Approving Supersedeas Bond (Doc. 459).

4. Defendants submitted the supersedeas Appeal Bond and Appeal Bond Rider to the Court, which the Court received and placed in its financial vault on November 26, 2018 per the Order, issuing receipt #K3036858. The receipt is being held by defense counsel. The Appeal Bond and Appeal Bond Rider were issued collectively by Fidelity and Deposit Company of Maryland as Bond No. 9278031.

5. On April 29, 2019, the Sixth Circuit Court of Appeals rendered its opinion and ordered that “the judgment of the District Court is AFFIRMED IN PART and REVERSED IN PART, the damages award is VACATED, and the case is REMANDED for further proceedings consistent with this opinion” (Doc. 460). The MANDATE of the Court of Appeals was filed in this Court on May 23, 2019 (Doc. 462).

6. As the award of damages has been vacated, the Appeal Bond and Appeal Bond Rider serve no further purpose and should be released. Fed. R. Civ. P. 62 entitles a party who files a satisfactory supersedeas bond to a stay of a money judgment as a matter of right. *Arban v. West Pub. Corp.*, 345 F.3d 390, 409 (6th Cir. 2003). The purpose of the supersedeas bond is to preserve the status quo during the pendency of an appeal. *Schreiber v. Kellogg*, 839 F. Supp 1157, 1159 (E.D. Pa. 1993). Since the Sixth Circuit Court of Appeals has vacated the award of money damages against Defendants, there is no longer any legal basis for the continued existence of the supersedeas bond. *Buckhorn, Inc. v. Orbis Corp.*, 2015 U.S Dist. LEXIS 151636 at \*3 (S.D. Ohio Sept. 29, 2015); *G.G. Marck & Assocs. v. Peng*, 2009 U.S Dist. LEXIS 27370 at \*4 (N.D. Ohio Mar. 31, 2009).

7. Accordingly, Defendants are entitled to obtain the release of the Appeal Bond and Appeal Bond Rider.

8. The undersigned counsel certifies that on August 8, 2019 he conferred with Martin Holmes, counsel for Plaintiffs, who stated that Plaintiffs have no opposition to this motion.

WHEREFORE, Defendants respectfully request the Court, without opposition, to enter an Order releasing the Appeal Bond and Appeal Bond Rider to counsel for Defendants according to any further Court instructions.

Respectfully submitted,

s/ Colby S. Morgan

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*ATTORNEYS FOR DEFENDANTS*

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this 14th day of August 2019, electronically filed the foregoing Defendants' Unopposed Motion to Release Supersedeas Bond and Bond Rider with the Clerk of Court using the CM/ECF system, which will automatically send an electronic notification of such filing to the following:

Martin D. Holmes (TN Bar No. 012122)  
Peter F. Klett (TN Bar No. 012688)  
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s/ Colby S. Morgan  
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